

# ARIZONA LEGISLATIVE COUNCIL

## MEMO

July 18, 2012

**TO:** President Steve Pierce

**FROM:** Ken Behringer  
General Counsel

**RE:** Rio Nuevo; Notice to Proceed (R-50-143)

### BACKGROUND

At a meeting on October 10, 2010, the board of directors of the Rio Nuevo Multipurpose Facilities District adopted the following motion:

The Rio Nuevo Multipurpose Facilities District hereby issues a notice to proceed to the City of Tucson that will be good for 90 days pursuant to ARS 48-2404(B) on a proposed hotel convention center and garage project with the following parameters . . . .<sup>1</sup>

The motion then set out thirteen requirements for the project. At its meeting on October 20, 2010, the Board revised the notice to proceed by adopting changes to some of the thirteen requirements. The City of Tucson apparently later rejected the project.

### QUESTION

Did the Board's actions comply with Arizona Revised Statutes (A.R.S.) section 48-4204, subsection B?

### ANSWER

The Board's actions appear to have met the statutory requirement that it issue a notice to proceed for a hotel and convention center located on the multipurpose facility site before allowing the expanded use of tax monies generated in the district.

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<sup>1</sup> The original motion apparently inadvertently omitted a comma after "hotel", because the revision described the project as a "hotel, convention center and garage project".

## **DISCUSSION**

A multipurpose facility district is a type of county stadium district that is formed pursuant to and governed by A.R.S. title 48, chapter 26. If approved by the voters, a multipurpose facility district may levy a transaction privilege tax or other taxes or charges as specified in statute. A.R.S. section 48-4237. Revenues generated by these taxes and charges may only be used for the components of a multipurpose facility that are owned by the district or that are publicly owned. These monies may only be used for four purposes specified in statute "until a notice to proceed is issued for a hotel and convention center located on the multipurpose facility site". A.R.S. section 48-2404, subsection B.

Language in a statute is given its ordinary meaning unless it appears from the context or otherwise that a different meaning is intended. *Southern Pacific Company v. Maricopa County*, 56 Ariz. 247 (1940). The statutes do not prescribe any special meaning to the condition for expanded use of the tax and charge monies, so the language must be given its ordinary meaning.

The Board clearly intended to comply with the notice requirement of A.R.S. section 48-2404, subsection B, because the language of the motion mirrors the statutory language. By the original and the revised motions, the Board did issue a notice to proceed for a hotel and convention center on the multipurpose facility site.

The fact that the notice was good for only 90 days does not negate the fact that the notice was issued. The statute does not specify any particular requirements or limitations in the notice. Also, nothing in the notice indicates that it was not given in good faith.

The statute does not require that the hotel and convention center project be started or completed for the expanded use of the tax and charge monies to come into effect. Therefore, the fact that the City of Tucson rejected the notice does not negate the effect of the notice.

## **CONCLUSION**

The Board is not limited to using the tax and charge monies to the four purposes specified by statute, because it has issued a notice to proceed for a hotel and convention center project. The Board may use these monies for any costs of the components of the multipurpose facility that are owned by the district or that are publicly owned.

cc: Greg Jernigan